

Introduced by Senator Harman

February 17, 2011

An act to amend ~~Section 57405~~ of Sections 57402, 57405, 57406, and 57413 of, and to add Section 57415 to, the Food and Agricultural Code, relating to dairy cattle supply liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 592, as amended, Harman. Dairy cattle supply liens.

(1) *Existing law provides that a person who provides feed or materials to aid the raising or maintaining of dairy cattle has a lien upon the proceeds of the milk or milk products produced from the dairy cattle, for the reasonable or agreed charges for the feed or materials provided and for the costs of enforcing the lien.*

This bill would expand the lien to include dairy cattle and offspring.

(2) *Existing law provides that the lien shall be perfected and shall be effective upon the filing of a notice of claim of lien with the Secretary of State, as specified. Existing law requires the notice of claim of lien, among other things, to state the name and address of the lien debtor. The notice of claim of lien is required to be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.*

This bill would delete the requirement that the lien be effective upon filing a notice of claim of lien with the Secretary of State, and would instead require the lien to be perfected by filing a notice of claim of lien with the Secretary of State, as specified. The bill would require the notice of claim of lien to state the last known name and address of the lien debtor. The bill would also delete the language providing that the

notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

(3) Existing law requires the lien claimant to provide written notice of the claim of the lien to the lien debtor within 10 days of the date of filing with the Secretary of State.

This bill would require notice to be served, as specified, depending on whether the lien debtor is an entity, individual, or general partnership. The bill would also provide that failure to give written notice of the claim would not affect the validity or priority of the lien.

(4) Existing law requires these liens to have a certain priority, as specified.

This bill would delete the requirement that the lien have priority in accordance with the time the notice of claim of lien is filed.

(5) Existing law requires the lien claimant to foreclose on a lien only in an action to recover the reasonable or agreed charges for feed and materials delivered and enforce a final judgment as provided.

This bill would instead authorize the lien claimant to foreclose on a lien in an action to recover the reasonable or agreed charges for feed and materials delivered and authorize the lien claimant to enforce a final judgment, as provided, and apply for a right to attach order or writ of attachment through the court in which the action is brought. After payment default by the lien debtor, the lien claimant would be authorized to notify any person obligated on any proceeds subject to the lien to make payment or otherwise render performance to the lien claimant, and would be authorized to enforce the obligations of any person obligated on any proceeds subject to the lien, as provided.

The bill would require that the prevailing party in any action or proceeding to enforce the lien be entitled to reasonable attorney's fees, fixed by the court, as an element of the costs of suit.

~~Existing law provides that a person who provides feed or materials to aid the raising or maintaining of dairy cattle has a lien upon the proceeds of the milk or milk products produced from the dairy cattle, for the reasonable or agreed charges for the feed or materials provided and for the costs of enforcing the lien. Existing law provides that the lien shall be perfected and shall be effective upon the filing of a notice of claim of lien with the Secretary of State, as specified. Existing law requires the notice of claim of lien, among other things, to state the name and address of the lien debtor. Existing law provides that the notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant,~~

and also provides that the notice of claim of lien shall be filed on a specified form which requires the signature of the lien claimant.

This bill would provide that the lien would be perfected by the filing of a notice of claim of lien, as specified. The bill would require the notice of claim of lien to state the name and address of the lien debtor as last known to the lien claimant. The bill would delete the language providing that the notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 57402 of the Food and Agricultural Code*
2 *is amended to read:*

3 57402. A person who provides feed or materials to aid the
4 raising or maintaining of dairy cattle *or offspring therefrom* has a
5 lien upon *the dairy cattle and offspring and* the proceeds of the
6 milk or milk products produced from the dairy cattle, for the
7 reasonable or agreed charges for the feed or materials provided
8 and for the costs of enforcing the lien. However, the amount of
9 charges secured by the lien cannot exceed an amount equal to the
10 reasonable or agreed charges for feed or material provided within
11 a 45-day period, and only two providers of feed or materials shall
12 have an enforceable lien at any time according to the priority set
13 forth in Section 57406.

14 ~~SECTION 1.~~

15 *SEC. 2.* Section 57405 of the Food and Agricultural Code is
16 amended to read:

17 57405. The lien created by this chapter shall be perfected by
18 the filing of a notice of claim of lien with the Secretary of State
19 pursuant to all the provisions of this section.

20 (a) The person who provides feed or materials may, at any time,
21 file in the manner and at the place set forth in this section, the
22 notice of claim of lien.

23 (b) The notice of claim of lien shall, at a minimum, set forth all
24 of the following information:

25 (1) The name and address of the lien claimant.

1 (2) The *last known* name and address of the lien debtor, ~~as last~~
2 ~~known to the lien claimant.~~

3 (3) The location of the dairy to which the feed and materials
4 were provided.

5 (4) That the lien claimant has a dairy cattle supply lien pursuant
6 to Section 57402.

7 (c) The notice of claim of lien shall be filed on a form which is
8 the standard form of original financing statement prescribed by
9 the Secretary of State pursuant to Section 9521 of the Commercial
10 Code. The standard form shall be completed with the following
11 changes:

12 (1) The lien claimant may be identified either as lien claimant
13 or as secured party.

14 (2) The form shall be signed by the lien claimant and need not
15 be signed by the debtor.

16 (3) In the space for the description of the collateral there shall
17 instead be entered the statement substantially as set forth in
18 paragraphs (3) and (4) of subdivision (b).

19 (d) The notice of claim of lien shall be filed, indexed, and
20 marked in the office of the Secretary of State in the same manner
21 as a financing statement is filed, indexed, and marked pursuant to
22 Section 9519 of the Commercial Code.

23 (e) (1) The lien claimant shall provide written notice of the
24 claim of lien to the lien debtor within 10 days of the date of the
25 filing with the office of the Secretary of State.

26 (2) *If the lien debtor is an entity, notice shall be given to the*
27 *lien debtor's registered agent for service of process. If the lien*
28 *debtor is an individual or general partnership, the notice shall be*
29 *given at any address at which the individual conducts business.*

30 (3) *Failure to give written notice of the claim to the lien debtor*
31 *shall have no effect on the validity or priority of the lien.*

32 (f) For the purpose of the Secretary of State's index pursuant
33 to Sections 9515, 9516, and 9522 of the Commercial Code and for
34 the purpose of the issuance of a certificate pursuant to Section
35 9519 or 9528 of the Commercial Code, the Secretary of State shall
36 identify a notice pursuant to this section as a financing statement.

37 *SEC. 3. Section 57406 of the Food and Agricultural Code is*
38 *amended to read:*

39 ~~57406. (a) The lien created by this chapter shall have priority~~
40 ~~in accordance with the time the notice of claim of lien is filed.~~

1 ~~(b)–~~

2 57406. The lien created by this chapter shall have the same
3 priority as a security interest perfected by the filing of a financing
4 statement as of the date the notice of claim of lien was filed.

5 *SEC. 4. Section 57413 of the Food and Agricultural Code is*
6 *amended to read:*

7 ~~57413. The lien claimant shall foreclose on a lien created by~~
8 ~~this chapter only in an action to recover the reasonable or agreed~~
9 ~~charges for feed and materials delivered. The final judgment shall~~
10 ~~be enforced pursuant to Title 9 (commencing with Section 680.010)~~
11 ~~of the Code of Civil Procedure.~~

12 57413. *The lien claimant may foreclose on a lien created by*
13 *this chapter in the following manners:*

14 (a) (1) *The lien claimant may foreclose in an action to recover*
15 *the reasonable or agreed charges for feed and materials delivered.*
16 *In such an action, the final judgment may be enforced pursuant to*
17 *Title 9 (commencing with Section 680.010) of Part 2 of the Code*
18 *of Civil Procedure.*

19 (2) *In such an action, the lien claimant may apply pursuant to*
20 *Title 6.5 (commencing with Section 481.010) of Part 2 of the Code*
21 *of Civil Procedure for a right to attach order and a writ of*
22 *attachment by filing an application for the order and writ with the*
23 *court in which the action is brought.*

24 (b) *After payment default by the lien debtor, the lien claimant*
25 *may do all of the following:*

26 (1) *Notify any person obligated on any proceeds subject to the*
27 *lien created under this chapter to make payment or otherwise*
28 *render performance to or for the benefit of the lien claimant.*

29 (2) *Enforce the obligations of any person obligated on any*
30 *proceeds subject to the lien created under this chapter and exercise*
31 *the rights of the lien debtor with respect to those proceeds, and*
32 *with respect to any property that secures the right to those proceeds*
33 *subject to the lien created under this chapter.*

34 (c) *If any person obligated on any proceeds subject to the lien*
35 *created under this chapter makes a payment to any person other*
36 *than the lien claimant after receipt of a notice pursuant to*
37 *paragraph (2) of subdivision (b), that payment shall not constitute*
38 *a defense or basis for reduction of the person's liability to the lien*
39 *claimant under paragraph (2) of subdivision (b).*

1 *SEC. 5. Section 57415 is added to the Food and Agricultural*
2 *Code, to read:*
3 *57415. In any action or proceeding to enforce the lien*
4 *established under this chapter, the party determined to be the*
5 *prevailing party shall be entitled to reasonable attorney's fees in*
6 *addition to other costs. Reasonable attorney's fees shall be fixed*
7 *by the court and shall be an element of the costs of suit.*

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